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Page 1 of 2

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/015,798	11/02/2001	William E. McLaughlin	01-4

26788
JOHN R. EWBANK
1150 WOODS ROAD
SOUTHAMPTON, PA 18966-4545

CONFIRMATION NO. 1300
FORMALITIES LETTER



OC000000007314643

Date Mailed: 01/16/2002

NOTICE TO FILE CORRECTED APPLICATION PAPERS

Filing Date Granted

This application has been accorded an Application Number and Filing Date. The application, however, is informal since it does not comply with the regulations for the reason(s) indicated below. Applicant is given **TWO MONTHS** from the date of this Notice within which to correct the informalities indicated below. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

The required item(s) identified below must be timely submitted to avoid abandonment:

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- A substitute specification in compliance with 37 CFR 1.52 because:
 - The specification cannot be scanned or properly stored. Page(s)
○ Papers must be legibly written either by a typewriter or mechanical printer in permanent ink or its equivalent in portrait orientation on flexible, strong, smooth, non-shiny, durable, and white paper. Application papers must be presented in a form having sufficient clarity and contrast between the paper and the writing thereon to permit the direct reproduction of readily legible copies in any number by use of photographic, electrostatic, photo-offset, and microfilming processes and electronic reproduction by use of digital imaging and optical character recognition. Pages **page 1 - 6** are not in compliance with 37 CFR 1.52(a). *The drawings filed are unacceptable because:*
Replacement page(s), together with a statement that the replacement page(s) contain no new matter, are required.
- Substitute drawings in compliance with 37 CFR 1.84 because:
 - drawings have a line quality that is too light to be reproduced (weight of all lines and letters must be heavy enough to permit adequate reproduction) or text that is illegible (reference characters, sheet numbers, and view numbers must be plain and legible) see 37 CFR 1.84(l) and (p)(1);

TECHNOLOGY CENTER R3700

*M*orong

*A copy of this notice **MUST** be returned with the reply.*

Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE



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PTO/SB/21 (08-00)

Approved for use through 10/31/2002. OMB 0651-0031

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Please type a plus sign (+) inside this box →

Replace Spec damaged
TRANSMITTAL
during *Antonie Sledzynski*
(to be used for all correspondence after initial filing)
none

Total Number of Pages in This Submission

Application Number

101,015,798

Filing Date

11/02/02

First Named Inventor

Wm S. McLaughlin

Group Art Unit

Preliminary Examination

Examiner Name

Martony

Attorney Docket Number

01-4

ENCLOSURES (check all that apply)

- Fee Transmittal Form
- Fee Attached
- Amendment / Reply
- After Final
- Affidavits/declaration(s)
- Extension of Time Request
- Express Abandonment Request
- Information Disclosure Statement
- Certified Copy of Priority Document(s)
- Response to Missing Parts/ Incomplete Application
- Response to Missing Parts under 37 CFR 1.52 or 1.53

- Assignment Papers (for an Application)
- Drawing(s)
- Licensing-related Papers
- Petition
- Petition to Convert to a Provisional Application
- Power of Attorney, Revocation Change of Correspondence Address
- Terminal Disclaimer
- Request for Refund
- CD, Number of CD(s)

- After Allowance Communication to Group
- Appeal Communication to Board of Appeals and Interferences
- Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
- Proprietary Information
- Status Letter
- Other Enclosure(s) (please identify below):

Replace Spec & Drawgs
damaged by postal

Remarks

Quasi
Compliance with 01/16/02 Request

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

TECHNOLOGY CENTER R3700

Firm
or
Individual name

John R Eubank

Signature

John R Eubank

Date

Feb 3, 2002

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: *Feb 22, 2002*

Typed or printed name

John R Eubank

Signature

John R Eubank

Date

Feb 3, 2002

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In the United States Patent and Trademark Office

#4 Response 3 CD
S. C. M. I. E. M. A. N. S.
3729

William E. McLaughlin

19/915,798 filed 011/01/01

COPY OF PAPERS
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Preliminary Examination Group

Southampton, PA 18966-4545

February 3, 2002

Commissioner of Patents, Washington, DC 20231

Box INITIAL EXAMINATION DIVISION

Sir:

In response to the communication of Jan. 16, 2002 indicating that the Anthrax Sterilization procedure had damaged the application, a true copy of the application is submitted herewith, together with a copy of the request for such replacement.

Respectfully submitted,

John R. Ewbank
John R. Ewbank Reg 14, 853

Voice 215-357-3977

Fax 216-322-2673

e-mail: hmrl@libertynet.org

Website: www.dffcs.org

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In the United States Patent and Trademark Office

Southampton, PA 18966-4545

November 2, 2001 [note that filing was attempted on August 9, 2001 by FAXing to 703-746-4256]

McLAUGHLIN APPLICATION FOR APPARATUS CLAIMS

Assistant Commissioner of Patents,

Box Patent Applications-

Washington, DC 20231

Sir:

**WHY THIS APPLICATION MERITS EXPEDITED PROSECUTION AS IF IT WERE
UNAMBIGUOUSLY ENTITLED FROM THE FIRST TO BE CALLED A
DIVISIONAL APPLICATION**

This application has a specification identical to that of a pending application now in the Publications group because of a Notice of Allowability issued September 7, 2001. Such allowed pending application has method claims and is a CPA application filed July 6, 2001 derived from parent application 09/235,6198, filed 01/21/99. Dr. Sean Smith was the Examiner throughout the prosecution. He is in Group 3729, headed by Lee Young. The applicant and inventorship herein are identical to such parent and CPA cases. The claims which are effectively sought herein are identical to the apparatus claims which previously were sought in the CPA application. When the parent case was filed, it included both method claims and apparatus claims. Such original apparatus claims are resubmitted [to maximize similarity to parent case as filed] but are cancelled by a Preliminary Amendment substituting the apparatus claims that were in the CPA case when capitulating to the Examiner's erroneous requirement for cancellation of the apparatus claims.

Counsel cannot quote a class and subclass for the presently sought claims because Examiner Smith never make a conventional restriction requirement.

When the case was filed on Jan. 21, 1999, there were both method and apparatus claims. In each of four amendments, applicant argued for the allowability of both method and apparatus claims, never making any election between them. The Examiner did not then raise any issue about restriction. Then in the Final Rejection, Examiner Smith quite erroneously asserted that method claims had

McLAUGHLIN Divisional Apparatus Application of 11/02/01 benefiting from 01/21/99

been elected, and required the cancellation of the apparatus claims in order to expedite a Notice of Allowability of the method claims. The restriction requirement was a baffling surprise feature in a Final Rejection. Legal authorities were cited in attacking the restriction requirement, but Examiner Smith repeated it in the response to the After Final amendment. It seemed wiser strategy to pay an extra filing and issue fee than to use appellate procedures involving delays, lawyer's time, etc. to try to overcome the hurdles arising from this baffling surprise. The client desired early issuance of a patent.

Because the present application benefits from the 01/21/99 filing date, it is tentatively designated as a **CONTINUATION APPLICATION, even though it will probably be treated essentially as a DIVISIONAL APPLICATION after the issuance of the filing receipt with its class-sub-class Group designations. This case should be processed with great speed.**

The documents for the application containing the apparatus claims were predominantly prepared in response to a telephone conversation with Examiner Sean Smith on Wednesday Aug. 9, 2001. The Examiner seemed adamant that if both method and apparatus claims were desired, it would be necessary to file a separate case for the apparatus claims, which he indicated could be done following the CPA procedure of FAXing the application to his new private FAS number 703-746-4256. Accordingly, Counsel filed what was intended to be this application by FAX on Aug. 9, 2001. Counsel did not send a form requesting a FAX reply because of Counsel's unawareness of the availability of the FAX-reply form. It was subsequent to Aug. 9, while browsing through the availability of Forms on line that Counsel discovered that there is a reply form for COA applications filed by FAX. Counsel is 85 years old, and has had as many as 9 patent applications pending, but is quasi-retired, and accordingly relies more upon guidance from the Examiner than some patent attorneys having a more active prosecution practice.

Counsel did phone Examiner Smith a few days after the FAXing and had oral confirmation that the FAX had been received and that the case was on file. Said FAX transmittal included the documents for paying the fee from the Deposit Account. When the filing fee was not routinely deducted from the Deposit Account, Counsel made a series of Status Inquiries, including leaving messages on the VoiceMail of Examiner Smith several times, inquiries at the Initial Examination

McLaughlin Apparatus Application of 11/2/01 benefiting from 01/21/99

section, and the like, every few weeks. Counsel's persistent inquiries to the Patent Office brought on Thursday, September 25 the surprising news that currently the Patent Office does not accept the filing of a Divisional Application by FAX. Such surprising news prompted counsel to communicate with the office of his Arlington, VA associate, Eric Scherlin. A week later, on Thursday, November 1, said office phoned to explain that efforts to obtain access to the CPA of 09/235,618 had been unsuccessful, so that the apparatus application could not easily contain documentary evidence concerning the filing by FAX on Aug. 9, 2001. Preparations for filing this application started immediately, but could not be completed until Friday, November 2, 2001.

Although the two patents will expire simultaneously under the 20 year term statute, counsel tried valiantly to seek simultaneous issue of the two patents. Prior to the 20 year term statutes, many courts were quite confused about "double patenting" as clarified in Stringham's book on Double Patenting. From 1937 onward, counsel particularly stressed the books about patent law by Stringham. However, today Stringham is almost unknown to many patent professionals. Stringham had respect for many court decisions concerning some aspects of intellectual property law, but contempt for the amazing confusion about double-patenting. Some of those asinine decisions have never been explicitly overruled. Some of the double patenting decisions contain language connoting that the Patent Office cannot be accused of error and that only counsel for applicant can be blamed if any mistakes were made. The Stringham book on double patenting encouraged efforts to seek both simultaneous expiration and simultaneous issue to avoid raising double patenting issues. Modern decisions probably acknowledge that mere simultaneous expiration avoids all double patenting problems. The prosecution record establishes the intent to avoid any double patenting problem, including the effectiveness of counsel's commitment to perennial common ownership of the differently numbered patents. The record also clarifies that counsel became a part-owner of such patent property during the prosecution, and is a shareholder in the common assignee, a corporation having essentially no assets except such patent property.

Substantially all patentability issues have been decided because the method claims, throughout the prosecution, had apparatus limitations, and the apparatus claims feature method limitations. Now that Examiner Smith has made it necessary to deal with two patent applications

McLaughlin Apparatus Application of 11/02/01 benefiting from 01/21/99

instead of one, there is hope that the Patent Office can make an adequate search for the apparatus claims, but also recognize why there appears to be an appropriate basis for a First Action Notice of Allowability for the apparatus claims. The Examiner handling this case, after making a supplemental search, can essentially use Dr. Smith's statement as the reason for allowability. Counsel seeks a prompt and favorable action.

A signature page is at the end of this submission.

-d--

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FEB 25 2002
P A T E N T & T R A D E M A R K O F F I C E

UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No. 01-4 Total Pages

First Named Inventor or Application Identifier

McLaughlinExpress Mail Label No. EK455248861US**APPLICATION ELEMENTS**

See MPEP chapter 600 concerning utility patent application contents.

- | | |
|--|---|
| 1. <input checked="" type="checkbox"/> Fee Transmittal Form
(Submit an original, and a duplicate for fee processing) | 6. <input type="checkbox"/> Microfiche Computer Program (Appendix) |
| 2. <input checked="" type="checkbox"/> Specification [Total Pages <input type="text"/>] | 7. Nucleotide and/or Amino Acid Sequence Submission
(if applicable, all necessary) |
| - Descriptive title of the Invention | |
| - Cross References to Related Applications | |
| - Statement Regarding Fed sponsored R & D | |
| - Reference to Microfiche Appendix | |
| - Background of the Invention | |
| - Brief Summary of the Invention | |
| - Brief Description of the Drawings (if filed) | |
| - Detailed Description | |
| - Claim(s) | |
| - Abstract of the Disclosure | |
| 3. <input checked="" type="checkbox"/> Drawing(s) (35 USC 113) [Total Sheets <input type="text"/>] | 8. <input type="checkbox"/> Assignment Papers (cover sheet & document(s)) |
| 4. Oath or Declaration [Total Pages <input type="text"/>] | 9. <input type="checkbox"/> 37 CFR 3.73(b) Statement <input checked="" type="checkbox"/> Power of Attorney (where there is an assignee) |
| a. <input type="checkbox"/> Newly executed (original or copy) | 10. <input type="checkbox"/> English Translation Document (if applicable) |
| b. <input checked="" type="checkbox"/> Copy from a prior application (37 CFR 1.63(d))
(for continuation/divisional with Box 17 completed)
<i>(Note Box 5 below)</i> | 11. <input type="checkbox"/> Information Disclosure Statement (IDS)/PTO-1449 <input type="checkbox"/> Copies of IDS Citations |
| i. <input type="checkbox"/> DELETION OF INVENTOR(S)
Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b). | |
| 5. <input type="checkbox"/> Incorporation By Reference (useable if Box 4b is checked)
The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein. | |
| 17. If a CONTINUING APPLICATION, check appropriate box and supply the requisite information:
<input checked="" type="checkbox"/> Continuation <input checked="" type="checkbox"/> Divisional <input type="checkbox"/> Continuation-in-part (CIP) of prior application No: <u>09/235618</u> | |

ACCOMPANYING APPLICATION PARTS

- | | |
|--|---|
| 12. <input checked="" type="checkbox"/> Preliminary Amendment | 13. <input checked="" type="checkbox"/> Return Receipt Postcard (MPEP 503)
(Should be specifically itemized) |
| 14. <input type="checkbox"/> Small Entity <input checked="" type="checkbox"/> Statement filed in prior application. Statement(s) <input checked="" type="checkbox"/> Status still proper and desired | 15. <input type="checkbox"/> Certified Copy of Priority Document(s)
(if foreign priority is claimed) |
| 16. <input type="checkbox"/> Other: <u>Clarifications</u>
<i>about complementary division
but Examiner did not give subclass</i> | |

18. CORRESPONDENCE ADDRESS

 Customer Number or Bar Code Labelor Correspondence address below**RECEIVED**

APR 5 2002

NAME

PATENT TRADEMARK OFFICE

TECHNOLOGY CENTER R3700

ADDRESS

John R Ewbank

CITY

STATE

ZIP CODE

COUNTRY

TELEPHONE

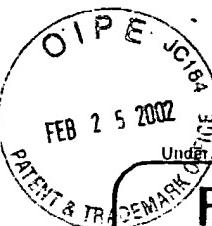
215-957-3977

FAX

215-322-2673

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FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT

(\$ 370.00)

Complete if Known

Application Number	Nov 21, 2001
Filing Date	
First Named Inventor	McLaughlin
Examiner Name	
Group Art Unit	
Attorney Docket No.	01-4

METHOD OF PAYMENT

- The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to

Deposit Account Number 50-1224

Deposit Account Name John R Ewbank

 Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17 Applicant claims small entity status Sec. 37 CFR 1.27

- Payment Enclosed:

 Check Credit card Money Order Other

FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
101	740	201	370	Utility filing fee	370.00
106	330	206	165	Design filing fee	
107	510	207	255	Plant filing fee	
108	740	208	370	Reissue filing fee	
114	160	214	80	Provisional filing fee	

SUBTOTAL (1) (\$ 370.00)

2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent	-20** =	x	=
Claims	-3** =	x	=
Multiple Dependent			=

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description		
103	18	203	9	Claims in excess of 20
102	84	202	42	Independent claims in excess of 3
104	280	204	140	Multiple dependent claim, if not paid
109	84	209	42	** Reissue independent claims over original patent
110	18	210	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$)

*or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	Filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examiner action	
115	110	215	55	Extension for reply within first month	
116	400	216	200	Extension for reply within second month	
117	920	217	460	Extension for reply within third month	
118	1,440	218	720	Extension for reply within fourth month	
128	1,960	220	980	Extension for reply within fifth month	
119	320	219	160	Notice of Appeal	
120	320	220	160	Filing a brief in support of an appeal	
121	280	221	140	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,280	241	640	Petition to revive - unintentional	
142	1,280	242	640	Utility issue fee (or reissue)	
143	460	243	230	Design issue fee	
144	620	244	310	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR 1.7(q)	
126	180	126	180	Submission of Information Disclosure Stmt	
SRI	40	581	40	Recording each patent assignment per property (times number of properties)	
146	740	246	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	249	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	279	370	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	
Other fee (specify)					

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$)

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SUBMITTED BY

Name (print/type)	JOHN R. EWANK	Registration No. (Attorney/Agent)	14853	Telephone	215-357-3977
Signature	John R. Ewbank	Date	Nov 3, 2001		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2030.

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PTO/SB/09 112-57

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Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCESTATEMENT CLAIMING SMALL ENTITY STATUS
(37 CFR 1.9(f) & 1.27(b))—INDEPENDENT INVENTORDocket Number (Optional)
99-1Applicant, Patentee, or Identifier William E. McLaughlin

Application or Patent No.: _____

Filed or Issued: _____

Title Infrared laser device and method for searching for lost item

As a below named inventor, I hereby state that I qualify as an independent inventor as defined in 37 CFR 1.9(c) for purposes of paying reduced fees to the Patent and Trademark Office described in:

- the specification filed herewith with title as listed above.
 the application identified above.
 the patent identified above.

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I have not assigned, granted, conveyed, or licensed, and am under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person had made the invention, or to any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

Each person, concern, or organization to which I have assigned, granted, conveyed, or licensed or am under an obligation under contract or law to assign, grant, convey, or license any rights in the invention is listed below.

- No such person, concern, or organization exists.
 Each such person, concern, or organization is listed below.

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Separate statements are required from each named person, concern, or organization having rights to the invention stating their status as small entities. (37 CFR 1.27)

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

William E. McLaughlin

NAME OF INVENTOR

William E. McLaughlin

Signature of inventor

Jan 21, 1999

Date

NAME OF INVENTOR

Signature of inventor

Date

NAME OF INVENTOR

Signature of inventor

Date

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In the United States Patent and Trademark Office

William L. McLaughlin

Quasi-Division of pending CPA filed July 5, 2001 continuing 09/235.618 of 01/21/99

Parent Application was in Group 3729

S. Smith Examiner; Superv.Ex. Lee Young

Allowed Sept. 7, 2001.Iss Fee due Dec. 7, 2001

Publications Group

STATEMENT CONCERNING TRUE COPY, ETC.

The specification and drawings submitted herewith for use as an application benefiting from the 01/21/99 filing date of the parent application are photocopies and true copies of the allowed CPA case. The three claims 1-3 submitted herewith are true copies of claims 3, 4, and 5 in the parent case as filed 01/21/99, but are merely of historical interest. A Preliminary Amendment [resembling CPA practice, as seems appropriate in this type of compulsory divisional case] substitutes the apparatus claims as they were pending in the CPA case at the time of the Examiner's erroneous requirement for their deletion.

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Both apparatus and method claims were initially sought. Both were argued for in each of the amendments filed in response to the first four rejections. It was only in the fourth [Final] rejection that the Examiner raised any issue about the presence of both apparatus and method claims. Counsel cited law and arguments in contending that both claims should issue in the same case. When the Examiner repeated such requirement in the post-final rejection, counsel interpreted it as a compulsory restriction, leading to this application. Counsel cannot note what an Examiner has designated as the class and sub-class of the presently sought claims, because the Examiner never made such a designation, but made a false accusation that applicant had elected method claims when the record shows that applicant consistently sought both method and apparatus claims. Prompt examination and allowance of the claims are earnestly solicited.

John R. Ewbank

John R. Ewbank Reg. No. 14,853



McLAUGHLIN Apparatus Application of 11/02/01 benefiting from 01/21/99

Signature page

Prompt issuance of a Notice of Allowance is earnestly solicited.

Respectfully,

A handwritten signature in black ink that appears to read "John R. Ewbank".

John R. Ewbank, Registration Number 14,853

Voice 215-357-3977 FAX 215-322-2673 e-mail hmrl@libertynet.org

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